

Special provision for payment of tax by certain companies.

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, [2012], is less than [eighteen and one-half per cent] of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [eighteen and one-half per cent]].

(2) [Every assessee,—

- (a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956); or
- (b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company:]

Provided that while preparing the annual accounts including profit and loss account,—

- (i) the accounting policies;
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;
- (iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,—

- (i) the accounting policies;
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;
- (iii) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Explanation [1].—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

- (a) the amount of income-tax paid or payable, and the provision therefor; or
- (b) the amounts carried to any reserves, by whatever name called [,other than a reserve specified under section 33AC]; or

- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
- (d) the amount by way of provision for losses of subsidiary companies; or
- (e) the amount or amounts of dividends paid or proposed ; or
- (f) the amount or amounts of expenditure relatable to any income to which [section 10 (other than the provisions contained in clause (38) thereof) or [***] section 11 or section 12 apply; or]

¹[(fa) the amount or amounts of expenditure relatable to income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86; or

(fb) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or

(fc) the amount representing notional loss on transfer of a capital asset, being share of a special purpose vehicle, to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of section 47; or]

[(g) the amount of depreciation,]

[(h) the amount of deferred tax and the provision therefor,

[(i) the amount or amounts set aside as provision for diminution in the value of any asset,

[(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,

²[(k) the amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be]

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by,—]]]

[(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the

¹ Inserted with effect from April 1, 2016

² Inserted with effect from April 1, 2016

assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation* or *Explanation* below the second proviso to section 115JA, as the case may be; or]

(ii) the amount of income to which any of the provisions of [section 10 (other than the provisions contained in clause (38) thereof)] or [***] section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or

[(*ia*) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(*ib*) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (*ia*); or]

³[(*ic*) the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any, such amount is credited to the profit and loss account; or

(*id*) the amount of income accruing or arising to an assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if such income is credited to the profit and loss account and the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or

(*ie*) the amount representing,—

(A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (*xvii*) of section 47; or

(B) notional gain resulting from any change in carrying amount of said units; or

(C) gain on transfer of units referred to in clause (*xvii*) of section 47, if any, credited to the profit and loss account; or

(*if*) the amount of loss on transfer of units referred to in clause (*xvii*) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be; or”]

[(*ii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(*a*) the loss shall not include depreciation;

³ Inserted with effect from April 1, 2016

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is *nil*; or]

(iv) to (vi) [***]

(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

[(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.]

[Explanation 2.—For the purposes of clause (a) of Explanation 1, the amount of income-tax shall include—

(i) any tax on distributed profits under section 115-O or on distributed income under section 115R;

(ii) any interest charged under this Act;

(iii) surcharge, if any, as levied by the Central Acts from time to time;

(iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and

(v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.]

[Explanation 3.—For the removal of doubts, it is hereby clarified that for the purposes of this section, the assessee, being a company to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, has, for an assessment year commencing on or before the 1st day of April, 2012, an option to prepare its profit and loss account for the relevant previous year either in accordance with the provisions of Part II and Part III of Schedule VI to the Companies Act, 1956 or in accordance with the provisions of the Act governing such company.]

⁴[Explanation 4.—For the purposes of sub-section (2), the expression "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956]

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the *Explanation* below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along

⁴ Inserted with effect from April 1, 2016

with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.]

[(5A) The provisions of this section shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B.]

[(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be:]

[Provided that the provisions of this sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012.]